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SUBJECT: IFTIKHAR CHAUDHRY RETURNS

Classified By: Anne W. Patterson, for reasons 1.4 (b)(d)

11. (C) Summary. A little more than two years after former President Musharraf initially fired him, Supreme Court Chief Justice Iftikhar Chaudhry was restored to the bench March 22 by a reluctant President Zardari. The saga of Chaudhry's fall and rise paradoxically demonstrated both the new-found strength of Pakistan's civil society and the weakness of its still politicized judiciary. Chaudhry's 2007 dismissal became a lightening rod for growing popular opposition to Musharraf's rule; opposition leader Nawaz Sharif successfully exploited that anger and rode it to increase his political power in the 2008 parliamentary elections. By flexing its new muscles, the media played a key role in keeping the judiciary issue alive; as the lawyers' movement became increasingly politicized by Nawaz, the press became increasingly critical of Zardari.

12. (C) The next question is how Chaudhry will respond to public expectations that he again will champion populist causes. Key pending cases include an appeal of the Supreme Court decision to disqualify Nawaz and Shahbaz Sharif from public office, a pending case on the constitutionality of the National Reconciliation Ordinance that gave Zardari and others immunity from prosecution and pending cases on former President Musharraf's alleged crimes during his reign. Chaudhry, who also was known for his judicial activism on the bench, may also resume efforts to free the "disappeared," a group of mostly Sindhi and Balochi political prisoners from the Musharraf era but which also includes a small group of terrorists of concern to the U.S. Within civil society, there is an almost giddy hope that Chaudhry will take radical action against both Zardari and Musharraf. Others question whether Chaudhry will risk the wrath of the Army and the political establishment yet again. In a meeting with the Australian High Commissioner just before resuming his office, Chaudhry avoided discussing political cases but indicated he remained interested in resolving the fate of the "disappeared" and was concerned about the establishment of Qazi courts outside the normal judicial system in Swat. Post continues to work with the GOP to ensure that any terrorists of concern who were detained extra-judicially are brought into the legal system for trial. End Summary.

The Chaudhry-Musharraf Saga

13. (C) When he summoned Chaudhry to fire him on March 9, 2007, former President Musharraf had every reason to believe that the Chief Justice would go quietly. Chaudhry had sworn an oath to Musharraf in 1999 and was anything but popular in

the legal community. He was known for abusing his court staff and lawyers and issuing incoherent oral decisions from the bench. His advocacy on behalf of the "disappeared" (primarily Baloch and Sindhi nationalists detained and held incommunicado for years) raised the hackles of intelligence/security forces who did not want to defend their actions in court. Chaudhry's decision to block a privatization deal for Pakistani Steel Mills in which former PM Aziz had an interest appeared to have been the last straw for Musharraf. But those plans backfired when Chaudhry simply refused to resign.

14. (C) Barrister and Pakistan People's Party (PPP) leader Aitzaz Ahsan immediately saw an opportunity to exploit Chaudhry's situation in favor of the PPP; he began to organize country-wide lawyers' rallies in support for the fired Chief Justice. The rallies tapped what had been growing economic discontent and popular opposition to Musharraf's eight-year rule; they were not always peaceful--over 40 people died in May 12, 2007 clashes in Karachi over a proposed Chaudhry appearance. For Musharraf himself, the battle with Chaudhry became intensely personal. PPP leader Benazir Bhutto, then in talks with Musharraf for a negotiated return from exile, wanted to keep her distance from Chaudhry; neither she nor her husband (now President) Asif Zardari ever supported his restoration, and she penalized Aitzaz for championing Chaudhry. On July 20, 2007, the Supreme Court, seeing a direct challenge to its own prerogatives, reinstated Chaudhry.

15. (C) Flush with victory, Chaudhry returned to the bench

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and increased his use of "suo moto" authority (the ability to intervene judicially on any matter regardless of whether there was a pending case) to intervene on everything from the price of vegetables and the height of buildings to a renewed push for the disappeared. His ruling to demand the Election Commission abandon the need for proof of identity and expand the voters list by 30 million within a month was a particularly bad, although popular, decision ahead of 2008 parliamentary elections.

16. (C) Chaudhry's court did not take action to prevent Musharraf from deporting Pakistan Muslim League-N (PML-N) leader Nawaz Sharif in September 2007. He did accept several cases directly affecting Musharraf. When it appeared the Court was about to rule Musharraf ineligible for the presidential election he won on October 6, 2007 Musharraf stepped in November 3 to impose emergency rule, abrogate the constitution and fire the Supreme and Provincial High Court judges. Although the then Attorney General swore that he had intercepts proving the Court would rule against Musharraf, many in the legal community still doubt that Chaudhry would really have provoked Musharraf this far.

Enter Nawaz Sharif

17. (C) Musharraf fired the Supreme Court and Provincial High Court justices, although some agreed to return under an oath to the Provisional Constitutional Order (PCO). Chaudhry was kept under house arrest for five months, during which time even his handicapped child was prevented from leaving the house to attend school. During the parliamentary election campaign, Nawaz Sharif seized upon the issue of judicial independence as a popular rallying cry and rode it to increase dramatically his power in the National and Punjab Assemblies. Musharraf, and Zardari after him, remained convinced that Nawaz was bankrolling the lawyers' movement and was somehow Chaudhry's patron; we have seen no evidence to support patronage, but Nawaz clearly backed the lawyers' movement. Aitzaz withdrew from campaigning to focus on leading the lawyers' movement. Newly elected PPP PM Gilani's first official order in March 2008 was to release Chaudhry from house arrest.

¶8. (C) The PPP government gradually restored most of the deposed judges, but Zardari drew the line at reinstating Chaudhry. Nawaz made restoration of the judiciary a key condition for joining a national coalition government with the PPP; when PPP President Zardari did not fulfill his promises to restore the judges, Nawaz pulled out of the coalition in August 2008. This divided the normally pro-PPP lawyers, whose movement increasingly became aligned with Nawaz and the opposition religious parties. In June 2008, the lawyers staged a peaceful march on Islamabad. On February 25, the Supreme Court declared Nawaz and Shahbaz Sharif ineligible for public office, and Zardari declared governor's rule in Punjab, thus ousting the PML-N from power. The March 12-16 lawyers' "long march" then became a demonstration for both restoration of judges and the Sharifs. When demonstrations turned violent in Lahore on March 15, the government backed down; PM Gilani announced the government would seek a repeal of the decision to disqualify the Sharifs and would restore all the deposed judiciary, including Iftikhar Chaudhry as Chief Justice.

Media Triumph

¶9. (C) Ironically, it was the private media channels approved by Musharraf which ensured the initial success of the lawyers' movement and built the public pressure that forced Musharraf to resign. By publicizing Chaudhry's 2007 nation-wide rallies and later giving Nawaz Sharif's pro-judiciary campaign wide coverage, the media kept the issue alive even when common Pakistanis were focused on rising inflation and energy blackouts. During a dinner March 25 in honor of the restored judges, speaker after speaker from the judicial community praised the media for its critical support throughout the restoration campaign. As Zardari continued to stonewall on restoring Chaudhry throughout 2008, however, the press became increasingly critical of Zardari and the PPP; at least one media group that owns print and electronic media (Jang) became openly

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pro-Nawaz and anti-Zardari in its biased coverage.

What Now?

¶10. (C) The big question now is whether Chaudhry will feel so empowered by his restoration that he will resume his judicial activism. There are several key issues/cases the Supreme Court will face in the coming months. Even if Chaudhry is not on every judicial panel, he will play a role in choosing the judges who will decide cases. In a March 20 meeting with the Australian High Commissioner, Chaudhry gave few clues as to how he would rule on political issues, but he indicated continued interest in the fate of the "disappeared" and expressed concern over the recent introduction of Qazi courts in Swat. On April 2, Chaudhry took suo moto notice of two high-profile cases involving the death of women in honor killings. There are several old and new cases pending that will affect the Sharifs, Musharraf, and the National Reconciliation Ordinance that granted Zardari and others judicial immunity.

Eligibility of the Sharifs

¶11. (C) The Supreme Court March 31 agreed to issue a stay order against its February 25 judgment disqualifying Nawaz and Shahbaz Sharif; this reinstated the status quo ante and temporarily allowed Shahbaz to resume his duties as Chief Minister of Punjab. The Court began hearings March 30 on the GOP's petition to review the February 25 decision. It is by no means a foregone conclusion that the court will reinstate both Sharifs. The constitution clearly says that no one convicted of crimes of moral turpitude are eligible to serve in parliament. The case against Nawaz, who was convicted of

hijacking and corruption, is stronger than the case against Shahbaz, who was convicted of absconding without paying a debt. If the Court rules against the Sharifs, there will be pressure for the parliament to amend the constitution in some way to accommodate the most popular leaders in the country.

PCO Judges

¶12. (C) Of primarily domestic interest, the Court is now composed of 26 justices, including those who agreed to return to the court after Musharraf fired the justices (these are referred to as Provisional Constitutional Order (PCO) judges) and those who refused. Several petitions have been filed to remove the PCO judges from the Court, and there is a great deal of speculation within the legal community on how these two groups of justices can work together on pending cases. Chaudhry may decide to move against the PCO judges.

Musharraf

¶13. (C) Part of the deal under which Musharraf resigned in August 2008 included a promise (as yet unfulfilled) by Zardari that Musharraf would be granted immunity from prosecution for any alleged crimes committed during his presidency. Since Chaudhry's reinstatement, Nawaz Sharif and several opposition parties have suggested that Musharraf should be tried for treason, and that the constitution's death penalty should be invoked. Others have submitted petitions to the Supreme Court urging that Musharraf be placed on the Exit Control List.

¶14. (C) Pakistan Muslim League (PML) President Chaudhry Shujaat Hussain told DCM and Polcouns March 29 that Musharraf was "panicked" over these reports. Musharraf began a 15 day tour of China March 30, and his PML party leaders have suggested now is the time for a two-three month extended stay abroad. On March 31, the Supreme Court dismissed several petitions against Musharraf on technical grounds, but this does not mean that Chaudhry will not be seeking revenge against Musharraf. If he does move against the former President, we expect the Army to step in and find a reasonable exit (i.e., no public trial) for Musharraf.

National Reconciliation Ordinance

¶15. (C) Many Pakistanis believe that Zardari opposed the return of Chaudhry because he was afraid the Chief Justice would rule unconstitutional the 2007 National Reconciliation Ordinance (NRO) that granted immunity to politicians charged

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but not convicted of crimes between 1986 and 1999. Both Benazir Bhutto and Zardari benefited from the NRO, which was negotiated as part of the deal preparing for Benazir's return from exile in 2007. There is still a petition pending challenging the constitutionality of the NRO, which remains unpopular with the general public. We do not believe Chaudhry would challenge Zardari directly on the NRO, at least not yet. If Zardari's star falls, however, a negative ruling on the NRO could open the door for parliamentary impeachment on corruption grounds.

The Disappeared

¶16. (S) Many Pakistanis erroneously believe (spurred by suggestions by Zardari and others) that the U.S. opposed the restoration of Chaudhry because we were concerned he would free the "disappeared," who are presumed to all be terrorists picked up at the behest of the USG. We were concerned when the courts under Chaudhry began releasing some of the "disappeared" who were known terrorists, and we began in 2007 to work with the GOP to bring these detainees into the legal system. Currently, there are about 40 persons of concern to the U.S. on terrorism grounds who are in GOP custody, and we continue to work with the PPP government to find a way to bring them to trial.

¶17. (C) Comment: Chaudhry remains a potent symbol for Pakistanis who dream of an independent judiciary to replace the reality of often corrupt and politicized courts. Civil society is rightly celebrating his return as a victory for lawyers and the media. Whether Chaudhry resumes a level of judicial activism that again threatens political stability, however, will affect his legacy as a champion for judicial independence.

PATTERSON